

ANDY PHILLIPS
Plaintiff,

WARDEN CHERRY LINDAMOOD, et al.
Defendants.

Case 3:09-cv-01187 Document 3 Filed 12/23/09 Page 1 of 3 PageID #: 34

plaintiff must plead and prove that the defendants, while acting under color of state law, deprived him of some right secured by the Constitution or laws of the United States. Parratt v. Taylor, 101 S.Ct. 1908, 1913 (1981).

The Eighth Amendment guarantees a prisoner the right to medical care. This right has been violated when prison officials are deliberately indifferent to a prisoner's serious medical needs. Estelle v. Gamble, 97 S.Ct. 285 (1976).

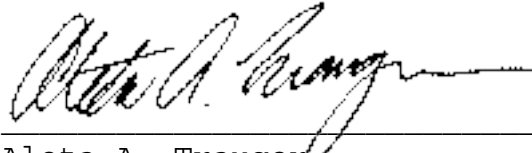
In this case, the plaintiff admits that Dr. Gray has examined him and prescribed an alternate course of treatment, i.e., eye glasses. Thus, the defendants have not been deliberately indifferent to plaintiff's medical needs. This dispute, therefore, arises over the adequacy of the care provided by the defendants to the plaintiff.

When a prisoner has received some medical attention and his claim is a challenge to the adequacy of the care provided, federal courts are generally reluctant to second guess medical judgments and constitutionalize claims which sound in state tort law. Hill v. Jones, 211 F.3d 1269 (6th Cir.2000). Medical malpractice does not become a constitutional tort merely because the victim is a prisoner. Estelle, 429 U.S. 105-106. Therefore, the plaintiff has failed to describe conduct resulting in a violation of federal law. Comstock v. McCrary, 273 F.3d 693, 703 (6th Cir.2001).

Absent a violation of federal law, the plaintiff is unable to prove every element of a § 1983 cause of action. Consequently, he

has failed to state a claim upon which relief can be granted. Under such circumstances, the Court is obliged to dismiss the complaint sua sponte. 28 U.S.C. § 1915(e)(2).

An appropriate order will be entered.

A handwritten signature in black ink, appearing to read 'Aleta A. Traugen', written over a horizontal line.

Aleta A. Traugen
United States District Judge